

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 9, 2002

D038556 People v. Holmes

The judgment is affirmed. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D040549 In re D. B., a Juvenile

The judgments are affirmed. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell
Clerk: D. E. Moore

D038359 In re Morris H., a Juvenile

Cause called on merits. Jared Phil Hanson, Esq. argued for appellant. Jeff Koch, Deputy Attorney General argued for respondent. Mr. Hanson replied. Cause submitted.

D038555 Bernardo Cardenas Cota et al. v. Wright Brothers Aviation, LLC., et al.

Cause called on merits. Samy S. Henein, Esq. argued for appellant. Thomas M. Monson, Esq. was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

D038017 Kalthia et al. v. Chhatrala et al.

Cause called on merits. Richard R. Spirra, Esq. argued for appellant/cross-respondent. James C. Mitchell, Esq. argued for respondent/cross-appellant. Mr. Spirra replied. Cause submitted.

D039057 Camarillo v. Vaage, et al.

Cause called on merits. Donald James Loftus, Esq. argued for appellant. Steven G. Amundson, Esq. argued for respondent. Mr. Loftus replied. Cause submitted.

Court recessed at 10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke
Clerk: D. E. Moore

D038367 People v. Peterson

Cause called on merits. Patricia Mary Ihara, Esq. argued for appellant. Garrett Beaumont, Deputy Attorney General was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

D037598 People v. Ordaz

Cause called on merits. Daniel H. Clifford, Esq. argued for appellant. Erika Hiramatsu, Deputy Attorney General argued for respondent. Mr. Clifford replied. Cause submitted.

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D039226 Luly v. Wigington Petroleum, Inc., et al.

Cause called on merits. Joseph James Rego, Esq. argued for appellant. William L. Fischbeck, Esq. was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

D038124 Heaton v. Heaton

Cause called on merits. Roger L. Heaton, argued for appellant in pro per. Susan Heaton, argued for respondent in pro per. Mr. Heaton replied. Cause submitted.

Court recessed at 2:16 p.m. until Tuesday, December 10, 2002 at 9 a.m.

D037962 Freeburn v. Stretton

The petition for rehearing is denied.

D041219 Tippin v. Superior Court of San Diego County/Lopez

The petition is denied.

**D040980 Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals
Board of California/Equilon Enterprises, LLC.**

The petition is denied.

**D041008 Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals
Board of California/Kalasho**

The petition is denied.

D041018 In re Pena on Habeas Corpus

The petition is denied.

D041013 In re Silva on Habeas Corpus

The petition is denied.

D039735 KSC Industries, Inc. v. ODM Technologies, Inc., et al.

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 10, 2002

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. E. Moore

D037220 Arya et al. v. Djekich

Cause called on merits. Laura Baudreau, Esq. argued for appellant. Lee A. Morrison, Esq. argued for respondent. Ms. Baudreau replied. Cause submitted.

D040097 First American Title Insurance Company v. Fields

Cause called on merits. Timothy E. Fields, attorney in pro per, argued for appellant. Katherine M. Green-Knudsen, Esq. argued for respondent. Cause submitted.

Court recessed at 9:44 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D038954 People v. Recarey

Cause called on merits. Nancy J. King, Esq. argued for appellant. Pat Zaharopoulos, Deputy Attorney General argued for respondent. Ms. King replied. Cause submitted.

Court recessed at 10:05 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith McConnell
Clerk: D. E. Moore

D039624 People v. Perry

Cause called on merits. David Becker Songco, Esq. argued for appellant. Matthew Mulford, Deputy Attorney General argued for respondent. Cause submitted.

D038521 People v. Linwood

Cause called on merits. Nancy J. King, Esq. argued for appellant. Susan Miller, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 1:53 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

D039686 James et al. v. City of Coronado et al.

Cause called on merits. Bradley Fields, Esq. argued for appellant. James Lough, Esq. argued for respondent. Mr. Fields replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 10, 2002 (Continued)

Court recessed at 2:11 p.m. until Wednesday, December 11, 2002 at 9:00 a.m.

D041017 Ultimate Staffing Services v. Superior Court of San Diego County/Shay Southworth et al.
The petition is denied.

D038403 People v. Williams
It is ordered that the opinion filed November 14, 2002, is modified. There is no change in judgment.

D038026 Ernst v. General Security Corporation et al.
The judgment is affirmed. Costs are awarded to Respondents. Huffman, J.;
We Concur: Benke, Acting P.J., McDonald, J.

D041095 Robles et al. v. Superior Court of Imperial County/Wal-Mart Stores, Inc.
The petition is denied.

D040438 In re Ray P., a Juvenile
The judgment is affirmed. McConnell, J.; We Concur: Benke, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 11, 2002

D040525 In re Tyler D., Juveniles

The judgments are affirmed. McIntyre, J.; We Concur: Haller, Acting P. J., McConnell, J.

D038555 Cota, et al., v. Wright Brothers Aviation, L.L.C., et al.

The order is affirmed. Costs to Wright Brothers. Huffman, Acting P.J.; We Concur: McIntyre, J. McConnell, J.

D038685 San Diego Police Officers' Association et al., v. City of San Diego Civil Service Commission et al.

Judgment reversed. Public Entities to bear costs on appeal. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D041116 Armstrong v. City of Carlsbad et al.

Pursuant to California Rules of Court, rule 8, the appeal filed October 18, 2002, is dismissed for failure of appellant to timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rule 4(b) and 5(c)).

D038865 Rolfe et al. v. California Transportation Commission et al./San Diego Regional Transportation Commission et al.

The judgment is affirmed. The respondents are entitled to costs on appeal. CERTIFIED FOR PUBLICATION. McConnell, J.; We Concur: Benke, Acting P.J., Nares, J.

D041261 Armstrong v. Superior Court of San Diego County/City of Carlsbad et al.

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman
Clerk: D. E. Moore

D035096) People v. Creasy

D038235) In re Creasy on Habeas Corpus

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant. Karl Terp, Deputy Attorney General argued for respondent. Mr. Ford replied. Cause submitted.

Court recessed at 9:41 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

D040441 In re Nychay on Habeas Corpus

Matter called merits. Rhonda Cartright, Deputy Attorney General argued for respondent. Will Rumble, Esq. argued for petitioner. Matter submitted.

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Court recessed at 9:44 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith Haller

D039312 Punsly et al. v. Ho

Cause called on merits. Charles A. Bird, Esq. argued for appellant. Thomas Paine Dunlap, Esq. argued for respondent. Mr. Bird replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. E. Moore

D038320 People v. Drews

D039785 In re Drews on Habeas Corpus

Causes called on merits. Peter B. Clarke, Esq. argued for appellant. Stacy Tyler, Deputy Attorney General argued for respondent, and submitted additional citations. Mr. Clarke replied. Cause submitted as to appeal ONLY, D038320.

D035990 People v. Mullen

Cause called on merits. Amanda Doerrerr, Esq. argued for appellant. Arlene Sevidal, Deputy Attorney General argued for respondent. Ms. Doerrerr replied. Cause submitted.

D038417 People v. De La Garza

Cause called on merits. George L. Schraer, Esq. argued for appellant. Doug Danzig, Deputy Attorney General argued for respondent. Mr. Schraer replied. Cause submitted.

D039198 Coronado Police Officers Association et al. v. Carroll et al.

Cause called on merits. Richard Pinckard, Esq. argued for appellant. William L. Pettingill, Deputy County Counsel argued on behalf of Deputy Public Defender for respondent. Mr. Pinckard replied. Cause submitted.

Court recessed at 3:04 p.m. until Thursday, December 12, 2002 at 9 a.m.

D039044 People v. Morgan

The conviction is affirmed. The sentence is reversed and the matter is remanded for resentencing in accord with this opinion. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D037895 People v. Rios

The judgment of conviction is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D039937 In re Megan S., a Juvenile

The judgment is affirmed. CERTIFIED FOR PUBLICATION. O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

FOURTH APPELLATE DISTRICT
DIVISION ONE
December 11, 2002 (Continued)

D041164 Baltierra v. U.S. Financial, L.P., et al.

Pursuant to California Rules of Court, rule 8, the appeal filed October 17, 2002, is dismissed for failure to timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rule 4(b) and 5(c)).

D041206 Greenberg et al. v. Shaffer Pools, Inc.

Plaintiffs' appeal from the July 2, 2002, order denying reasonable attorney fees and October 10, 2002, order on their motion for reconsideration is dismissed.

D039827 Harry et al. v. Kitlas

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D038416 People v. Perez

The judgment is reversed and the cause remanded to the superior court with directions to grant Perez's section 1538.5 motion as to the items seized from his apartment and vacate his guilty plea if Perez makes an appropriate motion within 30 days from the date this opinion becomes final or reinstate the judgment if Perez does not make such a motion. (People v. Rios (1976) 16 Cal.3d 351, 359.) O'Rourke, J.;
We Concur: McDonald, Acting P.J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald
Clerk: D. E. Moore

D037807 Bellows v. Plaza Bonita, LLC., et al.

Cause called on merits. R. G. Bellows, Attorney in pro per argued for appellant. Earl H. Maas, III, Esq. argued for respondent, Plaza Bonita, LLC. Michael John Danner, Esq. argued for respondent, Kone, Inc. Mr. Bellows replied.

D039925) In re Kaitlin D., a Juvenile

D040460) In re Kaitlin D., a Juvenile

Cause called on merits. Anthony James Dunne, Esq. argued for appellant. Linda Fabian, Esq. argued for the minor. Kate Bird, Deputy County Counsel argued for respondent. Mr. Dunne relied. Cause submitted.

Court recessed at 9:34 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D039168 Wallis v. Giromex, Inc., et al.

Cause called on merits. Patricia McCann Campo, Esq. argued for appellant. Sam Henein, Esq. argued for respondent. Ms. Campo replied. Cause submitted.

D039390 Lubitz v. Mohr

Cause called on merits. Michael Zitamer, Esq. argued for appellant. Robert H. Lynn, Esq. argued for respondent. Mr. Zitamer replied. Cause submitted.

D039779 Zolezzi v. Pacificare of California

Cause called on merits. Edward Albert Stump, Esq. argued for appellant. Jeffrey Ehrlich, Esq. argued for respondent, and submitted additional cases to be discussed at oral argument. Mr. Stump replied. Cause submitted.

Court recessed at 10:50 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. E. Moore

D039757 Manriquez v. Gourley

Cause called on merits. Kathryn M. Megli, Deputy Attorney General argued for appellant. John Thomas Burke, Esq. argued for respondent. Ms. Megli replied. Cause submitted.

Court recessed at 1:45 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald

D038310 Mazur v. Mazur

Cause called on merits. Janice R. Mazur, Esq. argued for appellant. Jennifer S. Hegemier, Esq. argued for respondent. Ms. Mazur replied. Cause submitted.

Court recessed at 2:22 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D037795 Gillette et al. v. Grossmont Union High School District

Cause called on merits. Roger Leif Gordon, Esq. was present in oral argument for appellant, and submitted on the briefs. Jack M. Sleeth, Jr., Esq. was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

D038306 Novak v. Novak

Cause called on merits. Janice R. Mazur, Esq. argued for appellant/cross-respondent. Stephen Temko, Esq. argued for respondent/cross-appellant. Ms. Mazur replied. Mr. Temko replied. Cause submitted.

D038881 Silvas v. South Bay Community Services et al.

Cause called on merits. Kevin F. Quinn, Esq. argued for appellant. Brian Worthington, Esq. argued for respondent, South Bay Community Services. Matthew C. Smith, Esq. argued for respondent, Corbin. Kyle A. Cruse, Esq. argued for respondent, Hecht. Mr. Quinn replied. Cause submitted.

Court recessed at 3:45 p.m. until Friday, December 13, 2002 at 9 a.m.

D038707 County of San Diego v. Ace Property & Casualty Insurance Company et al.

The appellant's petition for rehearing is granted. No further briefing or oral argument is required. The case is deemed submitted as of this date.

The court declines to accept or consider exhibits Appellant submitted after oral argument.

D038672 Micek v. Rojo

The order is reversed and the matter is remanded to the trial court for a contested hearing. McConnell, J.;
We Concur: Kremer, P.J., Nares, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
December 12, 2002 (Continued)

D039827 Kitlas v. Harry et al.

The order is affirmed. McConnell, J.; We Concur: Kremer, P.J., Nares, J.

D040511 In re Joshua P., a Juvenile

The judgment is affirmed. Nares, Acting P.J.; We Concur: McIntyre, J., McConnell, J.

D037851 People v. Harper

Affirmed. Benke, J.; We Concur: Kremer, P.J., Nares, J.

D038882 Reece et al. v. Hotel et al.

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D040469 In re Julian A., a Juvenile

The portion of the July 12, 2002 disposition order denying David's request for custody of the children is reversed and the matter is remanded for reconsideration of that issue. The court is directed to order the children placed with David under section 361.2, subdivision (a), unless a home evaluation or other evidence discovered since the contested disposition hearing establishes by clear and convincing evidence that placement with David would be detrimental to the safety, protection, or physical or emotional well-being of the children. The disposition order is otherwise affirmed. Nares, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D039954 In re C.L., a Juvenile

D040567 In re C.L., a Juvenile

(Consolidated) The orders are affirmed. Kremer, P.J., We Concur: Nares, J., McConnell, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 13, 2002

D040103 People v. Crawford

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D041056 Home Depot U.S.A. Inc. v. Superior Court of San Diego County/Sollie

The petition is denied.

Court convened at 9 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell

Clerk: D. E. Moore

D038491 Sprague et al. v. County of San Diego

Cause called on merits. Louis E. Goebel, Esq. argued for appellant. Judith A. McDonough, Deputy County Counsel argued for respondent. Mr. Goebel replied. Cause submitted.

Court recessed at 9:28 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

D038405 Morici v. Gordon et al.

Cause called on merits. Robert L. Gordon, Esq. argued for appellant, Gordon. David J. Rausa, argued for appellant in pro per, Rausa. Patrick M. Smith, Esq. argued for respondent, Morici. Mr. Gordon replied. Mr. Rausa replied. Cause submitted.

Court recessed at 10:08 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell

D039615 Save Our NTC, Inc. v. City of San Diego et al.

Cause called on merits. Michael Singer, Esq. argued for appellant. John P. Mullin, Deputy City Attorney argued for respondent, City of San Diego. Hayley Patterson, Deputy Attorney General argued for respondent, California Coastal Commission. Mark C. Zebrowski, Esq. argued for respondent, McMillin-NTC, LLC. Mr. Singer replied. Cause submitted.

Court adjourned at 10:48 a.m.

D041282 Home Depot U.S.A. Inc. v. Superior Court of San Diego County/Sollie

The petition is denied.

D039140 In re Conservatorship of Heim

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., Nares, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 13, 2002 (Continued)

D038867 People v. Rhoden

The judgment is affirmed. Haller, J.; We Concur: Kremer, P.J., Benke, J.

D037968 People v. Majors

Appellant's convictions of kidnapping (count 2) and kidnapping for rape (count 1) are reversed for insufficiency of the evidence. The trial court's order denying Appellant's section 1538.5 motion is reversed and the trial court is directed to permit Appellant to withdraw his guilty plea to counts 5 through 9 if within 30 days after this decision becomes final as to this court he files a motion to withdraw his guilty plea. In the event no motion for withdrawal of the guilty plea is timely filed, Appellant's convictions of counts 5 through 9 are affirmed. In all other respects, the judgment is affirmed and the matter is remanded to the trial court for resentencing. McDonald, J.; I Concur: McIntyre, J. I Respectfully Dissent (opinion): Benke, Acting P.J.

D040755 In re Vasquez on Habeas Corpus

The petition is denied.

D039295 People v. Belton

The judgment is affirmed. O'Rourke J.; We Concur: Kremer, P.J., Huffman, J.

D041078 Tamera V. et al. v. Superior Court of the County of San Diego/ San Diego County Health and Human Services Agency

The attorney for petitioner Tamera V. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Tamera V. is dismissed.